

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL HARKEY,
Plaintiff,

VS.

US NATIONAL BANK, *et al.*,
Defendants.

Case No. 2:14-cv-00177-RFB-GWF
Consolidated with:
Case No. 2:14-cv-01266-RFB-GWF

ORDER

This matter is before the Court on Plaintiff's Motion to Strike Untimely October 10, 2016 Answer of the SPS Defendants (ECF No. 443), filed on October 13, 2016. Defendants Select Portfolio Servicing, Inc., Credit Suisse First Boston Mortgage Securities Corporation, DLJ Mortgage Capital, Inc., Bill Koch, U.S. Bank, N.A., and Kimberly Clark filed their Opposition to Plaintiff's Motion and their Motion for Acceptance of Late Filed Answer (ECF No. 450, 451) on October 29, 2016. Plaintiff filed his consolidated Reply (ECF No. 466) on November 7, 2016. Also before the Court is Defendant Wells Fargo's Motion for Acceptance of Late Filed Answer (ECF No. 468), filed on November 7, 2016. The Court conducted a hearing in this matter on November 14, 2016.

Under Rule 12(f) of the Federal Rules of Civil Procedure, the Court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. Fed. R. Civ. P. 12(f). The essential function of a Rule 12(f) motion is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial. *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th cir. 1993), *rev'd on other grounds*, 510 U.S. 517, 114 S. Ct. 1023. Striking material pursuant to Rule 12(f) is considered a “drastic remedy” that is “generally disfavored.” *Nevada Fair Housing Center, Inc. V. Clark County*, 565 F.

1 Supp.2d 1178 (D. Nev. 2008). Given their disfavored status, courts often require a showing of
2 prejudice by the moving party before granting the requested relief. *Roadhouse v. Las Vegas Metro.*
3 *Police Dep't*, 290 F.R.D. 535, 543 (D. Nev. 2013). Whether to grant a motion to strike lies within
4 the sound discretion of the district court. *Id.*

5 Plaintiff requests that the Court strike Defendants Select Portfolio Servicing, Inc., Credit
6 Suisse First Boston Mortgage Securities Corporation, DLJ Mortgage Capital, Inc., Bill Koch, U.S.
7 Bank, N.A., and Kimberly Clark's ("Defendants") answer (ECF No. 436) because it was filed
8 untimely on October 10, 2016. Defendants argue that Plaintiff cannot demonstrate that he
9 experienced prejudice as a result of Defendants' late filed answer. Defendants request that the
10 Court accept their late filed answer because it was filed untimely as a result of excusable neglect.
11 *See Opposition*, (ECF No. 450), pg. 3-5. Defendant Wells Fargo asserts that it was inadvertently
12 not listed in the text of Defendants' late filed answer and Wells Fargo's counsel represents that she
13 intended to file the answer on behalf of all Defendants represented by the law firm of Wright,
14 Finlay & Zak. Defendant Wells Fargo requests that the Court accept its late filed answer. *See*
15 *Defendant Wells Fargo's Motion for Acceptance of Late Filed Answer*, (ECF No. 468), pg. 2-3.

16 The failure to timely file Defendants' answer was due to excusable neglect resulting from
17 Defendants' counsel's distraction by a family member's health issue. The failure to timely file an
18 answer has not caused prejudice to the Plaintiff. Furthermore, to the extent any prejudice occurred,
19 it can be rectified by appropriate court orders. Accordingly,

20 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Strike Untimely October 10, 2016
21 Answer of the SPS Defendants (ECF No. 443) is **denied**.

22 **IT IS FURTHER ORDERED** that Defendants Select Portfolio Servicing, Inc., Credit
23 Suisse First Boston Mortgage Securities Corporation, DLJ Mortgage Capital, Inc., Bill Koch, U.S.
24 Bank, N.A., and Kimberly Clark's Motion for Acceptance of Late Filed Answer (ECF No. 451) is
25 **granted**.

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1 **IT IS FURTHER ORDERED** that Defendant Wells Fargo's Motion for Acceptance of
2 Late Filed Answer (ECF No. 468) is **granted**.

3 DATED this 16th day of November 2016.

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6 GEORGE FOLEY, JR.
7 United States Magistrate Judge
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